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CAT/J/12

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

~~XXXXXXXXXX~~
~~XXXXXXXXXX~~ BOMBAY BENCH

O.A. No. 742/88

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~~XXXXXX~~

DATE OF DECISION 7.10.1991

Namdev Sitaram Sawant Petitioner

Mr. C.B.Kale Advocate for the Petitioner(s)

Versus

Union of India & Ors. Respondent

Mr. P.M.Pradhan Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. Justice U.C.Srivastava, Vice-Chairman

The Hon'ble Mr. M.Y.Priolkar, Member (A)

1. Whether Reporters of local papers may be allowed to see the Judgement? ✓
2. To be referred to the Reporter or not? ✓
3. Whether their Lordships wish to see the fair copy of the Judgement? ✓
4. Whether it needs to be circulated to other Benches of the Tribunal? ✓

MGIPRRND-12 CAT/86-3-12-86-15,000


(U.C. Srivastava)
Vice-Chairman

(4)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, BOMBAY

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Original Application No.742/88

Namdev Sitaram Sawant,
C/o. Shri C.B.Kale, Advocate,
Shree Niwas, Kardal Saphale,
PO Umbarpada, Tal. Palghar,
Dist. Thane, PIN 401 102.

... Applicant

V/s

1. The Supdt. of Post Offices,
Beed Division, Beed.

2. The Director of Postal Services,
Aurangabad Region, Aurangabad.

... Respondents

CORAM : Hon'ble Vice-Chairman, Shri Justice U.C.Srivastava
Hon'ble Member (A), Shri M.Y.Priolkar

Appearances:

Mr. C.B.Kale, Advocate
for the applicant and
Mr. R.M.Pradhan, Advocate
for the respondents.

ORAL JUDGEMENT:

Dated : 7.10.1991

(Per. U.C.Srivastava, Vice-Chairman)

The applicant who has started his service career in the Class-IV in the Postal Department in the year 1960 was promoted to the post of Postal Assistant where he worked for about 15 years whereafter he was reverted on the ground of unsuitability which according to the applicant was a major penalty and yet has been given to him without taking any proceedings against him. The applicant was promoted to the Postman's cadre in 1963 and after his training for clerical job he was appointed as Postal Assistant in the year 1980. The applicant gave choice for Bombay and Konkan Division but he joined Gevarai Post Office as Postal Assistant in lieu of the order which was passed. According to the applicant as the place is far away from Bombay, his mother was ill and he also fell ill and the mother

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ultimately died. He requested for transfer under Rule 38 of P&T, Volume IV to Bombay and also mutual exchange but the request was turned down. The applicant went on casual leave on 22.1.1982 and for years together he did not attend his duties and according to him he became a patient of Neurosis. Some four years thereafter the applicant went to rejoin his duties along with a medical certificate of one Dr. S.P.Salvi who was said to be Doctor to the Government Hospital. During the period the applicant was not on duty the reversion order was passed reverting him to the grade of Postman on the ground of his unsuitability as Postal Assistant and the reason for the same was that Dr.Solanke who gave him the medical certificate in July 1981 onwards in the capacity of Resident Medical Officer was not on the establishment of St. George Hospital, Bombay with effect from 22.4.1982 as revealed from the enquiries made by the Postal Department. The applicant later on contacted the departmental authorities and he was then told that in case he was prepared to work as Postman and gave this in writing he can be given the duty. The applicant gave this in writing and thereafter he was allowed to work as Postman. The applicant rejoined his duties as Postman on 26.2.1987. The applicant filed a representation thereafter on 23.3.1988 detailing the circumstances under which he was ill or he was reverted or he has been asked to accept the post of Postman. His representation was not replied to and thereafter he has approached the Tribunal. The applicant has prayed that the order of reversion reverting him permanently from the post of Postal Assistant to that of a Postman be set aside and the adverse remarks given in his confidential record for the

year 1981-82 based on the said order be expunged and the period of the applicants and service from 22.1.1982 onwards may be treated in Postal Assistant's cadre and all the resultant benefits may be given to him. The respondents have opposed the application and have stated that as the applicant was found unsuitable and that is why he was reverted but they have accepted that in fact the ground for the same was that he gave certificate from Dr. S.K.Solanke in his capacity as Resident Medical Officer, St.George Hospital, Bombay although he was not there and apart from taking the plea of limitation it has been pleaded that the applicant himself accepted the post of Postman voluntarily he has no right to raise a grievance against the same. It is true that the applicant has accepted the post of Postman voluntarily and gave this in writing as has been rightly contended by the learned counsel for the applicant that a person out of job for the last four years and not getting any salary had no option but in the circumstances to accept the same and as he has to rehabilitate himself during all these period he could file a representation within one year. As the representation was filed within one year the application cannot be thrown out on the ground that it is barred by limitation. It may be that a person could resume his normal senses after getting something being in service for one year but that will be true harsh to reject the application on the ground that it is barred by time and it is a fit case in which the delay could be condoned which is accordingly condoned. The facts as enumerated above indicates that as a matter of fact the applicant was reverted by way of punishment in view of the fact that authorities found that a false certificate was given

by him which was given by the Doctor who ceased to be a Resident Medical Officer of that particular hospital. Obviously if that was so it was a misconduct either on the part of the applicant or on the part of the Doctor. The authorities took ex-parte decision in the matter. In such a matter the applicant should have been associated. When the applicant was not coming on duty they could have waited for some time and after associating him with the same they could have arrived on a particular finding. The result could have been even worst for the applicant but without an enquiry the reversion which is a sort of major punishment could not have been given. It appears that later on the respondents themselves realised that some mistakes have been committed and that is why they allowed the applicant to resume his duties as Postman after four years break. Whatever may be the circumstances the applicant did accept the post of Postman. As both the parties are fault there appears to be no reason why the applicant should not get his dues and the respondents should not take back their steps. As the applicant was reverted obviously on the ground of punishment on some ex-parte enquiry the respondents are directed to consider the case of the applicant to the said post of Postal Assistant again say within a period of three months or promote him to the said post. Obviously it is the choice of the respondents to post him any place but in the instances of the case with the past it is desirable that he may be posted in the State of Maharashtra itself. With these observations the application stands disposed of finally. It is not clear from the pleadings whether the applicant has filed any representation against the adverse remarks or not. In

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case he has filed the same the respondents shall dispose of the same within the period mentioned above taking into consideration the pleas raised by him. It is, however, being made clear that even if the applicant is promoted to the higher post he will not be entitled to claim back wages on the said post and so far as the period during which he did not work obviously he will be entitled to leave in accordance with law. There will be no order as to costs.



(M.Y. Priolkar)
Member(A)



(U.C. Srivastava)
Vice-Chairman

v/-